

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE  
COMMISSION

In the Matter of:

SOUTHEAST TELEPHONE, INC. )  
Complainant )  
v. )  
KENTUCKY ALLTEL, INC. )  
Respondent )

Case No. 2004-00093

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**RESPONSE OF SOUTHEAST TELEPHONE, INC., TO  
KENTUCKY ALLTEL, INC.'S AMENDED MOTION TO DISMISS  
OR HOLD IN ABEYANCE**

Comes now SouthEast Telephone, Inc. ("SouthEast"), by and through counsel, and for its Response to the Amended Motion to Dismiss or Hold in Abeyance filed herein by Kentucky ALLTEL, Inc. ("ALLTEL"), states as follows:

**I. ALLTEL'S AMENDED MOTION TO DISMISS OR HOLD IN ABEYANCE IS WITHOUT MERIT.**

SouthEast objects to ALLTEL's amended motion as it is apparently yet another attempt at further delaying this matter. This Commission is well aware of the history of this matter, and SouthEast will not restate what is of record in both Case Number 2003-00115 and this case.

ALLTEL cites no authority in support of its motion. The U.S. District Court for the Eastern District of Kentucky (Case No. 04-16), has denied ALLTEL's requests for preliminary injunctive relief. There is no other recourse for ALLTEL to seek a stay of the Commission's lawful orders. There is no cause for further delay in this matter.

SouthEast requests that this Commission overrule ALLTEL's motion and permit the parties to proceed with this matter on the merits.

**II. ALLTEL IS NOT "VOLUNTARILY" PROVIDING SOUTHEAST WITH INTERIM UNE-P SERVICE.**

In its motion, ALLTEL asserts that it is "voluntarily agreeing to provide SouthEast with interim UNE-P service" while the parties discuss market-based rates or other UNE-P rates pursuant to an FCC request. This misplaced assertion typifies ALLTEL's collective mindset that it does not have an obligation to comply with this Commission's Orders. ALLTEL does, in fact, have an obligation to provide SouthEast with UNE-P service at the rates mandated by this Commission. Unfortunately, there was nothing "voluntary" about this arrangement.

There is a valid interconnection agreement in place that was the result of many months of negotiation and litigation. Although part of that litigation is still pending, this Commission's Orders in Case Number 2003-00115 continue to bind the parties, as this Commission has recently ruled.

ALLTEL relies on several letters drafted by the FCC Commissioners encouraging incumbent local exchange carriers ("ILECs") and competitive local exchange carriers ("CLECs") to enter into negotiations regarding rates and availability of unbundled network elements. Those letters do not relieve ALLTEL of the obligation to provide UNE-P service to SouthEast customers, nor do they relieve ALLTEL of its obligation to provide that service at the PSC's mandated rates. The FCC speaks only through its Orders,<sup>1</sup> and the letters attached to ALLTEL's motion are not FCC Orders. Those letters clearly do not constitute official FCC action. They are merely advisory in nature.

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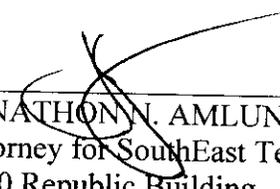
<sup>1</sup> See MCI v. AT&T, 515 F.2d 385 (D.C. Cir. 1974).

Finally, ALLTEL relies on the assertion that the “change of law” provisions of the interconnection agreement have been triggered mandating dismissal of SouthEast’s complaint. There has been no change of law regarding ALLTEL’s obligation to provide UNE-P service to SouthEast or any other competitor with an interconnection agreement. These provisions have not been implicated, and ALLTEL fails to explain why it believes those provisions have been triggered.

**CONCLUSION**

SouthEast objects to ALLTEL’s amended motion to dismiss or hold in abeyance. This case should proceed on the merits, and ALLTEL’s motion should be overruled.

Respectfully submitted,



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**CERTIFICATION**

I hereby certify that a true and correct copy of the foregoing was mailed, this the  
10<sup>th</sup> day of May, 2004, to:

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